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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,442	09/19/2003	Kazutoshi Kaizuka	45144-00042	4509

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EXAMINER
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ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/664,442

Applicant(s)

KAIZUKA, KAZUTOSHI

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>4/26/04&amp;7/13/04</u>   | 6) <input type="checkbox"/> Other: _____                                    |

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Claims 1 to 7 are pending in this application.

## **DETAILED ACTION**

### ***Claim Objections***

1 Claims 2, 4 and 7 objected to because of the following informalities:

In claim 2, in line 7, the term "any" should be deleted to make the claim in a proper form.

In claim 4, in line 9, the term "any" should be deleted to make the claim in a proper form.

Claim 7 as a method claim should depend on claim 6. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1) in view of Roller (US 4,857,306).

Dias (US' 791 B1) teaches a hair dyeing composition comprising oxidative dyes such as aromatic diamines and aminophenols in the amounts of 0.1 to 3% which within the claimed range as claimed in claims 1 and 2 (see col. 32, lines 7-47), non-oxidative hair coloring compounds of sulfur dyes such as 1-hydroxy-4-(ortho sulfo para-tolueno)-anthraquinone as claimed in claim 3 (see col. 42, lines 43-47 and col. 43, the bottom formula) and nitro dyes of nitroaminobenzenes or nitroaminophenols as claimed in claim 4 (see col. 41, lines 46-48), wherein the dye compounds (non-oxidative hair coloring compounds) are presented in the amounts of 0.001% to about 5% by weight which within the claimed range as claimed in claims

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3 and 4 (see and basic Brown 16 as claimed in claim 5 (see col. 41, line 54). The dyeing composition further comprises salicylic acid (see col. 47, line 20). Dias also teaches a method for dyeing hair comprising applying to the hair the dyeing composition as described above wherein the method is similar to methods claimed in claims 6 and 7 (see 54, claim 17).

The claims differ from the reference by reciting a powder comprising a silicon dioxide based poly-element mineral selected from the group consisting of perlite, pitchstone and tourmaline.

However, Dias (US' 791 B1) suggests the use of metallic dyes and metal chelate dyes in a dyeing composition (see col. 41, line 28).

Roller (US' 306) in analogous art of cosmetic formulation teaches a composition comprising precious stone powder such as tourmaline in the amount up to 10% in weight (see col. 2, lines 3-7 and line 35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to be motivated to modify the composition of Dias (US' 791) by incorporating the tourmaline compound in the claimed amount as taught by Roller (US' 306) to arrive at the claimed subject matter because Dias (US' 791 B1) suggests the use of metallic and metal dyes in a dyeing composition (see col. 41, line 28). Roller as a secondary reference clearly teaches a cosmetic composition comprising tourmaline compound (see col. 2, lines 3-7 and line 35), and, thus, a person of the ordinary skill in the art would be motivated to incorporate the tourmaline compound as taught by Roller (US' 306) in the dyeing composition of Dias (US' 791 B1) with a reasonable expectation of success for improving the dyeing properties of the composition and

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would expect such a composition to have similar results to those claimed, absent unexpected results.

*Conclusion*

The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

September 6, 2005